REMARKS

Claims 1, 3-8, 10, 12-15, 17-19, 21-24, 26-42, 44-45, 47-51 and 57-58 were previously pending in this application. Claims 1, 3-8, 10-15, 17-19, 21-24, 40-42, 44-45 and 47-51 have been allowed, and no claims have been added, canceled or amended. As a result, claims 26-39 and 57-58 remain rejected, of which claims 26, 30 and 37 are independent. The claims as presented are believed to be in allowable condition.

Rejections under 35 U.S.C. §102(e)

Independent claims 26, 30 and 37 are rejected under 35 U.S.C. §102(e) as purportedly being anticipated by U.S. Published Application No. 2002/0156965 to Gusler et al. ("Gusler"). This rejection is largely repeated from a previous Office Action mailed January 4, 2005. Applicants respectfully traverse this rejection for the reasons stated in Applicants' response to that Office Action, which is incorporated herein by reference.

The rejection is based upon an interpretation of Gusler wherein the backup file system 406 (FIG. 4) is alleged to correspond to the claimed first backup storage system that receives information relating to backup of activities of a second backup storage system, with the second backup storage system purportedly corresponding to the server 400. As discussed below, the system shown in FIG. 4 of Gusler does not meet the limitations of each of the independent claims when interpreted in this manner. In addition, the discussion below also makes clear that the system of Gusler cannot be read to disclose the claimed system with the server 400 corresponding to the first backup storage system and the client 402 corresponding to the second backup storage system.

A.   Claim 26

Claim 26 recites a method for use in a computer system having at least first and second backup storage systems to each store backup data from at least one client. The method comprises an act of receiving information related to backup activities of the second backup storage system at the first backup storage system, wherein at least some of the backup data which is stored on the second backup storage system is not stored on the first backup storage system.

1.   The Interpretation Of Gusler Espoused By The Office Action Fails To Meet The
      Limitations Of Claim 26

According to the interpretation espoused by the Office Action, the backup file system 406

of Gusler (shown in FIG. 4) corresponds to the first backup storage system recited by claim 26,

and the backup image/seed file 414 corresponds to the claimed second backup storage system.

Thus, according to this interpretation, the claimed first backup storage system resides on the

client 402, and the second backup storage system resides on server 400.

If interpreted in this fashion, Gusler fails to satisfy all of the limitations of claim 26. The

Office Action asserts that, if interpreted this way, Gusler meets the limitation of at least some of

the backup data stored on the second backup storage system (i.e. seed file 414 on server 400) not

being stored on the first backup storage system (i.e., backup file system 406 on client 402),

because the seed file 414 on server 400 may store backup information retrieved from multiple

clients 402 (¶36). However, if interpreted this way, Gusler fails to meet the claim limitation of

receiving information related to backup activities of the second backup storage system (i.e.,

server 400) at the first backup storage system (i.e., client 402). As shown in FIG. 4, backup

information in the system of Gusler flows only in the opposite direction, such that Gusler does

not disclose or suggest receiving information related to the backup activities of server 400 at

client 402, as would be required for this limitation to be satisfied under the interpretation of

Gusler espoused in the Office Action.

As a result, if interpreted in the manner espoused by the Office Action, Gusler fails to

meet the limitations of claim 26.

2.   Any Other Interpretation of Gusler Also Fails to Meet the Limitations of
      Claim 26

Gusler also fails to meet the limitations if interpreted differently. For example, if backup

file system 406 on client 402 were considered to correspond to the claimed second backup

storage system and seed file 414 on server 400 were considered to correspond to the first backup

storage system, then Gusler would fail to meet the claim limitation of at least some of the backup

data stored on the second backup storage system (i.e., backup file system 406 on client 402) not

being stored on the first backup storage system (i.e., seed file 414 on server 400). In this respect,

in the system of Gusler, a local backup image created by client 402 is retrieved by, and stored on, server 400 as seed file 414 (¶38-39), so that the server 400 stores all of the backup data stored on the client 402.

As a result, Gusler fails to meet the limitations of claim 26 if interpreted in this manner as well.

3.   Conclusions Regarding Claim 26

For at least the reasons stated above, claim 26 patentably distinguishes over Gusler, such that the rejection of claim 26 under 35 U.S.C. §102(e) over Gusler should be withdrawn.

Claims 27-28 and 57-58 depend from claim 26, and are allowable for at least the same reasons.

B.   Claim 30

Claim 30 recites a first backup storage system to store backup data from at least one first client, the first backup storage system for use in a computer system having a second backup storage system to store backup data from at least one second client. The first backup storage system comprises a first controller, coupled to the second backup storage system, to receive information related to backup activities of the second backup storage system, wherein at least some of the backup data which is stored on the second backup storage system is not stored on the first backup storage system.

As with claim 26 discussed above, Gusler fails to meet the limitations of claim 30 regardless of how it is interpreted. For example, if Gusler is interpreted such that backup file system 406 on client 402 corresponds to the claimed first backup storage system and the seed file 414 on server 400 corresponds to the second backup storage system, then Gusler fails to satisfy the limitation of a first backup storage system comprising a first controller to receive information related to the backup activities of a second backup storage system, as the client 402 of Gusler does not receive information related to the backup activities of the server 400.

Conversely, if Gusler is interpreted such that seed file 414 on server 400 corresponds to the claimed first backup storage system and backup file system 406 on client 402 corresponds to the second backup storage system, then Gusler fails to satisfy the limitation of at least some of

the data stored on the second backup storage system not being stored on the first backup storage system, because Gusler discloses that the entire backup image stored on the client 402 is also stored on the server 400 as seed file 414.

In view of the foregoing, claim 30 patentably distinguishes over Gusler, such that the rejection of claim 30 under 35 U.S.C. §102(e) over Gusler should be withdrawn.

Claims 31-36 depend from claim 30 and are allowable for at least the same reasons.

C.   Claim 37

Claim 37 recites a computer readable medium encoded with a program for execution on a computer system that includes first and second backup storage systems coupled together, the first and second backup storage systems each storing backup data from at least one client. The program, when executed on the computer system, performs a method comprising an act of transferring information related to backup activities of the second backup storage system between the second backup storage system and the first backup storage system, wherein at least some of the backup data which is stored on the second backup storage system is not stored on the first backup storage system.

Gusler fails to meet the limitations of claim 37. As discussed above, if Gusler is interpreted such that backup file system 406 on client 402 corresponds to the claimed first backup storage system and the seed file 414 on server 400 corresponds to the second backup storage system, then Gusler fails to satisfy the limitation of transferring information related to backup activities of a second backup storage system between the second backup storage system and the first backup storage system, because information related to the backup activities of server 400 is not transferred from server 400 to client 402 in the system of Gusler.

Conversely, if Gusler is interpreted such that seed file 414 on server 400 corresponds to the claimed first backup storage system and backup file system 406 on client 402 corresponds to the second backup storage system, then Gusler fails to satisfy the limitation of at least some of the data stored on the second backup storage system not being stored on the first backup storage system, because Gusler discloses that the entire backup image stored on the client 402 also is stored on the server 400 as seed file 414.

As a result, claim 37 patentably distinguishes over Gusler, such that the rejection of claim 37 under 35 U.S.C. §102(e) over Gusler should be withdrawn.

Claims 38-39 depend from claim 37 and are allowable for at least the same reasons.

Allowed Claims

Applicants acknowledge with appreciation the allowance of claims 1, 3-8, 10-15, 17-19, 21-24, 40-42, 44-45 and 47-51. The Office Action includes a statement of reasons for allowance which asserts that the allowed independent claims provide "a backup method/system comprising first, second and third backup systems and at least one domain that includes first and second backup systems and excludes the third backup system," and indicates that the prior art of record failed to teach or suggest such a method/system.

Applicants agree that the prior art of record fails to disclose or suggest the subject matter recited by these claims, but would like to clarify for the record that independent claims 11, 17, 22, 40, 44 and 49 fail to recite a third backup system, and thus fail to recite a domain which includes first and second backup systems and excludes a third backup system. These claims are allowable solely because their respective limitations are not disclosed or suggested by the prior art of record.

In addition, allowed independent claims 17, 22, 44 and 49 are not directed to a method or system, but rather are directed to a user interface, computer-readable medium, backup storage system and computer-readable medium, respectively. Although these claims are allowable over the prior art, they are not identical in scope to the allowed method or system claims.
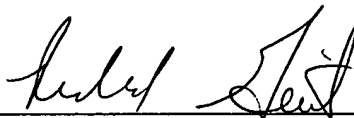
CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,
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